



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 25, 2013

Ms. Judi S. Rawls
Police Legal Counsel
City of Beaumont
P.O. Box 3827
Beaumont, Texas 77704-3827

OR2013-01481

Dear Ms. Rawls:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 477575.

The Beaumont Police Department (the "department") received two requests from the same requestor for all documents related to a specified investigation. You state you are releasing some of the requested information. You claim portions of the submitted information are excepted from disclosure under sections 552.101, 552.117, 552.130, and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we address your argument that portions of the submitted information are not responsive to the requests because this information was later found to not be relevant to the investigation. We note the requestor seeks all documents and communications related to the investigation. Thus, any information obtained as part of the investigation, even if later found to not be relevant, is responsive to the request. Therefore, we find all of the submitted information is responsive to the requests and we address your arguments against disclosure for the entirety of the submitted information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses information protected by other statutes, including

section 1324a of title 8 of the United States Code. Section 1324a governs I-9 forms and their related documents. This section provides an I-9 form and "any information contained in or appended to such form, may not be used for purposes other than for enforcement of this chapter" and for enforcement of other federal statutes governing crime and criminal investigations. *See* 8 U.S.C. § 1324a(b)(5); *see also* 8 C.F.R. § 274a.2(b)(4). Release of the submitted I-9 forms in this instance would be "for purposes other than enforcement" of the referenced federal statutes. Accordingly, we conclude the submitted I-9 forms and attachments, which we have marked, are confidential pursuant to section 1324a of title 8 of the United States Code and must be withheld under section 552.101 of the Government Code.¹

The submitted information contains W-4 tax forms. Section 6103(a) of title 26 of the United States Code provides that tax return information is confidential. *See* 26 U.S.C. § 6103(a)(2), (b)(2)(A), (p)(8); *see also* Attorney General Op. MW-372 (1981). Employee tax W-4 forms are excepted from disclosure by section 6103(a). Open Records Decision No. 600 (1992). Accordingly, the department must withhold the submitted W-4 tax forms, which we have marked, under section 552.101 in conjunction with section 6103(a) of title 26 of the United States Code.²

Section 552.101 of the Government Code also encompasses section 11 of article 49.25 of the Code of Criminal Procedure, which provides as follows:

The medical examiner shall keep full and complete records properly indexed, giving the name if known of every person whose death is investigated, the place where the body was found, the date, the cause and manner of death, and shall issue a death certificate. . . . The records are subject to required public disclosure in accordance with [the Act], except that a photograph or x-ray of a body taken during an autopsy is excepted from required public disclosure in accordance with [the Act], but is subject to disclosure:

- (1) under a subpoena or authority of other law; or
- (2) if the photograph or x-ray is of the body of a person who died while in the custody of law enforcement.

Crim. Proc. Code art. 49.25, § 11. You state the CD you have indicated consists of photographs taken during an autopsy. We understand neither of the statutory exceptions to

¹As our ruling for this information is dispositive, we need not address your arguments against its disclosure.

²As our ruling for this information is dispositive, we need not address your arguments against its disclosure.

confidentiality is applicable in this instance. Therefore, we determine the department must withhold the photographs you have indicated under section 552.101 of the Government Code in conjunction with section 11 of article 49.25 of the Code of Criminal Procedure.

Section 552.101 of the Government Code also encompasses chapter 411 of the Government Code, which pertains to criminal history record information ("CHRI") generated by the National Crime Information Center or by the Texas Crime Information Center. *See* Gov't Code § 411.083(a). Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI states obtain from the federal government or other states. Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual laws with respect to the CHRI it generates. *See id.* Section 411.083 of the Government Code deems confidential CHRI the Texas Department of Public Safety ("DPS") maintains, except DPS may disseminate this information as provided in chapter 411, subchapter F of the Government Code. *See* Gov't Code § 411.083. Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *Id.* § 411.089(b)(1). Other entities specified in chapter 411 of the Government Code are entitled to obtain CHRI from DPS or another criminal justice agency; however, those entities may not release CHRI except as provided by chapter 411. *See generally id.* §§ 411.090-.127. Similarly, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 in conjunction with chapter 411, subchapter F of the Government Code. Upon review, we find the information we have marked constitutes CHRI. Thus, the department must withhold the marked information under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code.³

Section 552.101 of the Government Code also encompasses section 1703.306 of the Occupations Code, which provides:

(a) A polygraph examiner, trainee, or employee of a polygraph examiner, or a person for whom a polygraph examination is conducted or an employee of the person, may not disclose information acquired from a polygraph examination to another person other than:

- (1) the examinee or any other person specifically designated in writing by the examinee;
- (2) the person that requested the examination;

³As our ruling for this information is dispositive, we need not address your arguments against its disclosure.

(3) a member, or the member's agent, of a governmental agency that licenses a polygraph examiner or supervises or controls a polygraph examiner's activities;

(4) another polygraph examiner in private consultation; or

(5) any other person required by due process of law.

(b) The [Texas Department of Licensing and Regulation] or any other governmental agency that acquires information from a polygraph examination under this section shall maintain the confidentiality of the information.

(c) A polygraph examiner to whom information acquired from a polygraph examination is disclosed under Subsection (a)(4) may not disclose the information except as provided by this section.

Occ. Code § 1703.306. Upon review, we find the information we have marked constitutes information that was acquired from a polygraph examination and is, therefore, within the scope of section 1703.306. It does not appear the requestor falls into any of the categories of individuals who are authorized to receive the polygraph information under section 1703.306(a). Accordingly, the department must withhold the polygraph information we have marked under section 552.101 of the Government Code in conjunction with section 1703.306 of the Occupations Code.⁴

Section 552.101 of the Government Code also encompasses section 414.009 of the Government Code, which provides in pertinent part:

(a) A person who is a member or employee of the [Texas Crime Stoppers Council] or who accepts a report of criminal activity on behalf of a crime stoppers organization commits an offense if the person intentionally or knowingly divulges to a person not employed by a law enforcement agency the content of a report of a criminal act or the identity of the person who made the report without the consent of the person who made the report.

Gov't Code § 414.009. You state the information you have marked discloses the content of a report of a criminal act made to a crime stoppers organization. *See id.* § 414.001(2)(B) (defining "crime stoppers organization" as a public organization that is operated on a local or statewide level, that pays rewards to persons who report to the organization information about criminal activity, and that forwards the information to the appropriate law enforcement agency). Based on your representations and our review, we agree the crime stoppers

⁴As our ruling for this information is dispositive, we need not address your arguments against its disclosure.

information you have marked, and the additional information we have marked, is confidential under section 414.009 of the Government Code, and the department must withhold this information under section 552.101 of the Government Code.

Section 552.101 of the Government Code also encompasses the common-law right to privacy, which protects information if it (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be met. *Id.* at 681-82. Common-law privacy protects the types of information held to be intimate or embarrassing in *Industrial Foundation*. *See id.* at 683 (information relating to sexual assault, pregnancy, mental or physical abuse in workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs). Additionally, this office has found some kinds of medical information or information indicating disabilities or specific illnesses are generally highly intimate or embarrassing. *See* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). This office has also found that personal financial information not related to a financial transaction between an individual and a governmental body ordinarily satisfies the first element of the common-law privacy test. *See* Open Records Decision Nos. 545 at 4 (1990) (attorney general has found information regarding receipt of governmental funds or debts owed to governmental entities is not excepted from public disclosure by common-law privacy), 523 at 4 (1989) (noting distinction under common-law privacy between confidential background financial information furnished to public body about individual and basic facts regarding particular financial transaction between individual and public body). In addition, a compilation of an individual's criminal history is highly embarrassing information, the publication of which would be highly objectionable to a reasonable person. *Cf. U.S. Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 764 (1989) (when considering prong regarding individual's privacy interest, court recognized distinction between public records found in courthouse files and local police stations and compiled summary of information and noted that individual has significant privacy interest in compilation of one's criminal history). Furthermore, we find a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. We note telephone numbers of members of the public are generally not highly intimate or embarrassing. *See* Open Records Decision No. 455 at 7 (1987) (home addresses, telephone numbers, dates of birth not protected under privacy).

However, we note the common-law right to privacy is a personal right that "terminates upon the death of the person whose privacy is invaded." *Moore v. Charles B. Pierce Film Enters.*, 589 S.W.2d 489, 491 (Tex. App.—Texarkana 1979, writ ref'd n.r.e.); *see also* Attorney General Opinions JM-229 (1984) ("the right of privacy lapses upon death"), H-917 (1976) ("We are . . . of the opinion that the Texas courts would follow the almost uniform rule of other jurisdictions that the right of privacy lapses upon death."); Open

Records Decision No. 272 at 1 (1981) (privacy rights lapse upon death). Thus, information pertaining solely to a deceased individual may not be withheld under section 552.101 of the Government Code in conjunction with common-law privacy. Upon review, we find the information we have marked and indicated is highly intimate or embarrassing and of no legitimate public interest. The department must withhold the marked and indicated information under section 552.101 in conjunction with common-law privacy. However, we find the remaining information is not highly intimate or embarrassing and of no legitimate public interest and may not be withheld under section 552.101 on that basis.

Section 552.117(a)(2) of the Government Code excepts from public disclosure a peace officer's home address and telephone number, social security number, family member information, and emergency contact information, regardless of whether the peace officer made an election under section 552.024 of the Government Code. Gov't Code § 552.117(a). Section 552.117(a)(2) applies to peace officers as defined by article 2.12 of the Code of Criminal Procedure. We note section 552.117(a)(2) also encompasses a peace officer's cellular telephone number, unless the cellular telephone service is paid for by a governmental body. *See* Open Records Decision No. 506 at 5-6 (1988) (statutory predecessor to section 552.117 not applicable to cellular telephone numbers provided and paid for by governmental body and intended for official use). Therefore, the department must withhold the information we have marked and indicated under section 552.117(a)(2) of the Government Code; however, the officer cellular telephone numbers at issue may only be withheld if the cellular service is not paid for by a governmental body.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title or registration, and personal identification document issued by an agency of this state or another state or country is excepted from public release. Gov't Code § 552.130(a)(1)-(3). Upon review, we find the department must generally withhold the motor vehicle record information we have marked under section 552.130 of the Government Code. We note, however, the purpose of section 552.130 is to protect the privacy interests of individuals. Because the right of privacy lapses at death, motor vehicle record information that pertains to a deceased individual may not be withheld under section 552.130. *See Moore*, 589 S.W.2d at 491; *see also Justice v. Belo Broadcasting Corp.*, 472 F. Supp. 145, 146-47 (N.D. Tex. 1979); Attorney General Opinions JM-229 (1984), H-917 (1976); Open Records Decision No. 272 at 1 (1981). We note that some of the motor vehicle record information at issue relates to a vehicle that was owned by an individual who is now deceased. Accordingly, the motor vehicle record information that pertains to the deceased individual may only be withheld under section 552.130 if a living person owns an interest in the vehicle at issue. If no living person owns an interest in the vehicle, then the motor vehicle record information relating to that vehicle is not excepted from disclosure and must be released. Furthermore, the requestor in this instance is an attorney for the family of the deceased individual. If the requestor is acting as the authorized representative of any surviving owner of the deceased individual's vehicle, then she has a right of access to the surviving owner's motor vehicle record information and

this information may not be withheld under section 552.130. *See* Gov't Code § 552.023(a); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when an individual or authorized representative asks governmental body to provide information concerning that individual).

Section 552.136(b) of the Government Code states "[n]otwithstanding any other provision of [the Act], a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential." Gov't Code § 552.136(b). This office has determined an insurance policy number is an access device number for purposes of section 552.136. The bank account numbers, bank routing numbers, credit card numbers, and insurance policy numbers we have marked constitute access device numbers for purposes of section 552.136. Thus, the department must generally withhold the information we have marked under section 552.136 of the Government Code. We note, however, section 552.136 protects the privacy interests of individuals, and the right to privacy lapses at death. *See Moore*, 589 S.W.2d at 491. Therefore, if the marked information is associated with accounts and insurance policies that belonged solely to a deceased individual, they are not excepted from disclosure under section 552.136. However, to the extent a living individual has an interest in the accounts and insurance policies at issue, the department must generally withhold them under section 552.136 of the Government Code. We note the requestor, as the attorney for the family of the deceased individual, may be the authorized representative of the living individuals who may have an interest in the account numbers at issue. *See* Gov't Code § 552.023; ORD 481 at 4. Therefore, if living individuals have interests in the accounts and insurance policies at issue and the requestor is not the authorized representative of these individuals, the department must withhold the information marked under section 552.136 of the Government Code. If the account numbers and insurance policy numbers at issue are associated with accounts and insurance policies that belonged solely to a deceased individual or the requestor is the authorized representative of living individuals who may have interests in the accounts and insurance policies at issue, then the department may not withhold the account and insurance policy numbers at issue under section 552.136 of the Government Code.

Section 552.137 excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body[,]" unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See* Gov't Code § 552.137(a)-(c). Section 552.137 is not applicable to an Internet website address. We note that the purpose of section 552.137 is to protect the privacy interests of individuals, and because the right of privacy lapses at death, the e-mail address of a deceased individual may not be withheld under section 552.137. *See Moore*, 589 S.W.2d at 497. We have marked e-mail addresses that are subject to section 552.137 of the Government Code. You do not inform us that a member of the public has affirmatively consented to the release of any of the e-mail addresses at issue. Therefore, the department must withhold the e-mail addresses we have marked under section 552.137, unless such e-mail addresses pertain to an individual who is deceased.

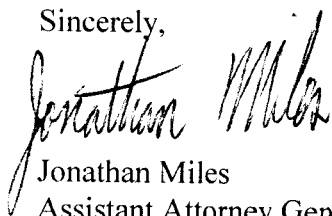
In summary, the department must withhold, under section 552.101 of the Government Code: (1) the marked submitted I-9 forms and attachments in conjunction with section 1324a of title 8 of the United States Code; (2) the marked W-4 tax forms in conjunction with section 6103(a) of title 26 of the United States Code; (3) the photographs of the body taken during the autopsy in conjunction with section 11 of article 49.25 of the Code of Criminal Procedure; (4) the CHRI we have marked in conjunction with section 411.083 of the Government Code; (5) the polygraph information we have marked in conjunction with section 1703.306 of the Occupations Code; (6) the crime stoppers information we have marked in conjunction with section 414.009 of the Government Code; and (7) the marked and indicated information in conjunction with common-law privacy. The department must withhold the information we have marked and indicated under section 552.117(a)(2) of the Government Code; however, the officer cellular telephone numbers at issue may only be withheld if the cellular service is not paid for by a governmental body. If living individuals have interests in the information we have marked under section 552.130 of the Government Code, and the requestor is not the authorized representative of these individuals, the department must withhold the information we have marked under section 552.130 of the Government Code. If living individuals have interests in the information we have marked under section 552.136 of the Government Code, and the requestor is not the authorized representative of these individuals, the department must withhold the information we have marked under section 552.136 of the Government Code. The department must withhold the e-mail addresses we have marked under section 552.137 of the Government Code unless such addresses pertain to an individual who is deceased or the owner of an e-mail address affirmatively consents to disclosure. The remaining information must be released.⁵

⁵We note Open Records Decision No. 684 (2009) is a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including e-mail addresses of members of the public under section 552.137 of the Government Code, W-4 forms under section 552.101 of the Government Code in conjunction with section 6103 of title 26 of the United States Code, an I-9 form under section 552.101 under section 1324a of title 8 of the United States Code, and direct deposit authorization forms under section 552.101 in conjunction with common-law privacy, and license plate numbers under section 552.130 of the Government Code without the necessity of requesting an attorney general decision. As noted, the requestor may have a right of access to some of the information being released. *See* Gov't Code § 552.023(a). Furthermore, on September 1, 2011, the Texas legislature amended section 552.130 to allow a governmental body to redact the information described in subsections 552.130(a)(1) and (a)(3) without the necessity of seeking a decision from the attorney general. *See id.* § 552.130(c); *see also id.* § 552.130(d)-(e) (requestor may appeal governmental body's decision to withhold information under section 552.130(c) to attorney general and governmental body withholding information pursuant to section 552.130(c) must provide certain notice to requestor). We note the information being released contains social security numbers. Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office. *See id.* § 552.147(b).

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read "Jonathan Miles". The signature is written in a cursive, flowing style.

Jonathan Miles
Assistant Attorney General
Open Records Division

JM/bhf

Ref: ID# 477575

Enc. Submitted documents

c: Requestor
(w/o enclosures)